

LAKE COUNTY BOARD of ADJUSTMENT
January 8, 2020
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Steve Rosso, Mary Jensen, Mike McKee

STAFF PRESENT: Jacob Feistner, Rob Edington, Clint Evenson, Tiffani Murphy, Lita Fonda; Wally Congdon

Don Patterson, 2019 chair, called the meeting to order at 3:30 pm

SELECT 2020 CHAIR AND VICE-CHAIR (3:30 pm)

Motion made by Steve Rosso, and seconded by Mike McKee, to appoint Don Patterson as chair and Mary Jensen as vice-chair. Motion carried, all in favor.

STILLWATER FARM CONDITIONAL USE—FINLEY POINT (3:31 pm)

Clint Evenson presented the staff report. (See attachments to minutes in the January 2020 meeting file for staff report.) Board members had no questions. No one was present to comment for the applicant.

Public comment opened: None offered. *Public comment closed.*

Motion made by Steve Rosso, and seconded by Mary Jensen, to approve the conditional use with findings of fact and conditions. Motion carried, all in favor.

MILLER VARIANCES—FINLEY POINT (3:35 pm)

Rob Edington noted Betty Miller and her friend Pat [McDonald] were here, and presented the staff report. (See attachments to minutes in the January 2020 meeting file for staff report.)

Rob, Mike and Steve worked out that the cabana was 20 feet by 12 feet. Rob noted the front of the structure was 38.5 feet from the high water mark. In one drawing, the proposed addition was listed as 10 feet and elsewhere it was listed as 12. They were assuming the proposed addition was 12 feet. That would place the edge of the porch approximately 24.5 feet from the high water mark. He verified there was no patio currently. A lakeshore permit application had been submitted. The patio would extend into the lakeshore protection zone. A path or paved section of the patio would go down to the water, and would be covered under the Lakeshore Protection regulations. The path would be reviewed under those regulations. It had been partially reviewed. The focus was on the variance request first.

Public comment opened:

Lloyd Turnage noted his family owned the property to the immediate west. They had no issues with adding to the cabana there. He thought it was built in the 1990's. He'd helped.

[Public comment closed.]

Don asked Betty Miller if she'd like to comment. She asked if the board had questions. She thought the patio was part of this. Rob explained it was part of the overall review. It was [with] the lakeshore [permit application], which she'd also submitted. She explained they just wanted a nice place down by the lake, as shown in the middle picture of attachment 6. It would be nice to have a screened in porch that provided protection from rain, too much sun or mosquitoes. A seawall had been put in by the previous owner.

Betty clarified for Mike that a slab would be poured as a base for the screened porch. They would have a contractor do this. The screened-in porch would be basically wood and screens. There would be a little wood on the bottom.

Lloyd commented from his property, you didn't notice the cabana as it was. The addition would be very unobtrusive. The other side of the property was much further away [from the cabana]. They wouldn't know it was there.

Comparative mosquito problems in different places were touch upon. Betty described places in Montana where she'd lived. She purchased this property in September and didn't have previous experience with Flathead Lake. Lloyd said the mosquitoes came out but were not excessive.

Steve touched on the 2 variances, one for side setback and another for the lake setback. The side setback had almost no impacts. The lake setback did impact the quality of the water in the lake and they wanted to make sure to mitigate impacts if they could. He saw a few bushes along the lake. What was between the cabana and the lake? Betty replied there were a few bushes. She planned to do more landscaping with bushes. There was protective vegetation towards [Lloyd's] property, which was towards the lake. [The previous owner] has it all open. There was the seawall and then a chain link fence. She removed vegetation up by the house, where they had massive beautiful gardens that were too much for her to take care of. Once she could put in the patio, she was going to plant more, although not anything tall. Steve explained how the plant roots helped take up the nutrients from storm water to keep those out of the lake. He gave an example from Eagle Bend, where after a year of bad algae, they didn't fertilize or mow next to the harbor and they didn't have any algae. If the nutrients were used by plants on the land, then they didn't grow plants in the water. It was a good example of why buffer zones were in the zoning regulations and why the board was responsible to mitigate additional impacts when variances were granted that might compromise some of that.

Steve suggested changing a finding, pg. 9, item f.vii: Add a new finding (item f.vii) to say, "Adequate and appropriate landscaping is completed to rebuild the native vegetated buffer in the 50-foot setback from Flathead Lake."

Pat McDonald said to replace the vegetation in the buffer zone would be a piece of cake because there was very little in there. One reason for that was the soil was very poor. It was gravel. Steve suggested talking to a landscaper about native plants that did well in poorer soils. He highlighted condition #3 (pg. 10), that called for them to submit a vegetation plan. He suggested including native plants and a variety of plants. He asked Betty about this. Betty

mentioned she was a master gardener from the Chicago botanic garden and had learned about planting native plants. She noted she hadn't removed plants. Jacob explained that with the increased impervious areas, they had to account for that. Betty asked about the timing of submitting the plan. Rob said she has a year to do that if this [variance] was approved. Jacob highlighted the four conditions that stated 'prior to the issuance of a permit' on pg. 10. Betty asked if she had to wait for another meeting. Jacob clarified that another meeting wasn't involved. If she wanted the permit soon, she'd want to get the information to them soon. Rob clarified this would be a staff review. He shared that the contractor has told him during a site visit that Betty wanted to add more bushes.

Mike thought the project was laid out adequately. He wasn't in favor of requiring an additional vegetation plan over what had been discussed. Steve clarified that they weren't requiring anything over what had been discussed. He added to the findings of fact that if they didn't rebuild the buffer, then they would adversely affect the neighboring properties and the public by impacting the quality of water in the lake, in order for item f (pg. 9) to be true.

Pat asked if Rob could provide names of local plant people for help. Jacob thought they might be able to do it themselves with Betty's experience. Steve mentioned a list of native plants that Jacob indicated was with the lakeshore regulations, and a local nursery/landscaper.

Motion made by Steve Rosso, and seconded by Mary Jensen, to accept the findings of fact as modified and the conditions and terms as written, and approve the variances. Motion carried, all in favor.

MEANS VARIANCE & CONDITIONAL USE—FINLEY POINT (4:11 pm)

Tiffani Murphy paused for a moment so a request to phone a neighbor to participate in the meeting could be done. In the pause, some corrections were noted:

- Don, attachment 3, 2nd paragraph, 1st line: Change 'request is relieve' to 'request will relieve'.
- Mary, pg. 12, 2nd line: Add 'not' between 'shall' and 'be'.

Tiffani made multiple attempts to connect with the party who requested to be phoned without success. She left a voicemail which included the number to call back to join in. She provided the applicants with a copy of a comment letter that was received late. (See attachments to minutes in the January 2020 meeting file for handouts.) The meeting then proceeded and Tiffani presented the staff report, beginning at 4:15. (See attachments to minutes in the January 2020 meeting file for staff report.) She pointed to the comment that was received late. The person who wanted to listen in on the meeting hadn't had verbal comments.

Steve checked about the situation where the request was for the right to disturb manmade slopes, created years ago. Tiffani explained the regulations did not give an 'out' for how the slopes were made. They simply said slopes over 25%. Steve pointed to the concern about what would happen to the material as expressed in condition #9 on pg. 11. His experience was the soil would be distributed around the property. Tiffani clarified the concern was to avoid a repeat of what happened here, where it was disposed of on another area of this lot or on another lot where it might create the need for another conditional use for manmade slopes.

She noted if the piles hadn't been established and were maybe just dirt, they might have been able to interpret that differently. Because these were established and vegetated, staff couldn't verify and just say they were manmade.

Kent Means thought the comment in the letter he'd just received about this being a very large house on a small lot was misleading. The footprint was about 1300 square feet. He mentioned overhanging a portion of the house and trying to respect the natural topography as much as possible. They might or might not do the garage but wanted to have the ability to do so in the future if they lived there full time.

Public comment: No public present to comment.

Steve, pg. 11, #2, 1st line: Add 'of' between 'square feet' and 'slopes'.

Regarding condition #7 on pg. 11, Tiffani clarified that plans for the residence had been submitted. Kent shared that he was an architect so this was not a big problem. They would rather not do a full set of construction documents for the garage at this point although they would be happy to provide a design document with the plan and elevations.

Steve, pg. 11, #7: Change 'construction' to 'preliminary design'.

Steve, pg. 11, #9, last sentence: Add 'unapproved' between 'other' and 'properties'.

Mary, pg. 12, #10: Add 'not' between 'shall' and 'be'.

Motion made by Steve Rosso, and seconded by Mary Jensen, to approve the conditional use and variance with findings of fact and conditions as corrected. Motion carried, all in favor.

MINUTES - DEFERRED

OTHER BUSINESS (4:31 pm)

Jacob brought up a suggestion regarding the ability to have one or two substitute board members. Per Wally, this could only be done if the bylaws specifically stated that. He'd also talked with the Commissioners. He asked the board for their thoughts. Wally gave more information. Mike suggested calling the person an 'alternate' rather than a 'substitute', based on his service on other state boards provided by MCA. Wally said this was doable. The question was if an alternate only worked when somebody couldn't. You had to do the bylaws to say specifically that you only used the alternate when a regular person couldn't do it. He liked 'substitute' because a substitute was there in lieu of the one who was supposed to be there. If this was done, Don suggested that [these people] would come to some meetings to see how the operation went. Wally thought they'd require attending a certain number of times per year to stay up with what was going on. Jacob noted that few applicants had previous board experience, and were learning as they went. Having them as an alternate was a good way to give them experience. Steve pointed to situations where current board members might find this attractive. Jacob offered to bring some suggested language at the next meeting.

Don Patterson, chair, adjourned the meeting at 4:37 pm.